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MISCELLANY.

A STATEMENT OF THE BUSINESS DONE BY THE COURT AT ITS SEPTEMBER TERM, 1900, AT STAUNTON.—

Whole number of cases on docket.....	47
Final judgments and decrees entered.....	27
Removal to Richmond.....	9
Continued because records were not printed.....	11
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INSURANCE—REPUDIATION BY ASSURER OF LIABILITY—ACTION FOR DECLARATION OF LIABILITY.—*Honour v. Equitable Life Assurance Society* (1900), 1 Ch. 852, was a somewhat unusual action. One Powis had effected a policy of insurance on his own life with the defendant company, which he had assigned to the plaintiff. After two premiums had been paid the defendants refused to receive any further premium and repudiated any liability on the policy. The plaintiff commenced the action in the lifetime of Powis, and claimed a declaration that the policy was valid and binding on the defendants, and for an injunction to restrain them from repudiating it. The defendants contended that the action would not lie, and that until the death of Powis the court should make no declaration as to whether the policy was valid or not, and they contended that the plaintiff's only remedy was to bring an action for damages. Buckley, J., who tried the case, although agreeing that the action could not be maintained, thought that the plaintiff ought not to be prejudiced by the defendants' refusal to accept the premiums, and he therefore, as a condition of dismissing the action, required an undertaking from the defendants that in case an action should thereafter be brought on the policy the defendants would not rely on the non-payment of premiums as a defence. Subsequently, on the plaintiff submitting to be examined as a witness, the objection to the form of action was withdrawn and the case heard on its merits, with the result that the policy was held to have been obtained by fraud, and was ordered to be delivered up to be cancelled.—*Canada Law Journal*.

THE MISCALLED RIGHT OF PRIVACY.—The question what rights of privacy a person may legally claim has arisen several times in recent years. Courts have not been well agreed concerning it, and those which have upheld such a right have not clearly defined its extent. A recent decision by Judge Davy of the Supreme Court, at Rochester, New York, sustains a right of action by a girl against a manufacturer who used her portrait, without her consent, as an advertisement. He says that to refuse her relief "would be to admit that wrong has been committed which causes her severe mental pain and distress and pecuniary injury, and yet the law can afford her no relief. Such a rule is contrary to my views of equity jurisprudence." This decision commends itself to one's sense of justice and decency. The fundamental principle of law on which it can be supported is not so clear.

No valid distinction in principle seems to exist between the unauthorized publication of a portrait and any other publication by which a person is brought into undesired publicity. One's face is no more sacred than his reputation or anything

else pertaining to his personality. The wrongful publication of one's portrait, except when it affects a property right, is only one particular mode of discrediting him in the estimation of others. The essence of the wrong is the injurious effect upon his property right or upon his reputation or standing among other people. It is merely incidental and immaterial whether the printed characters used to describe him are the ordinary letters of the alphabet grouped into words, or mere lines and dots grouped into a picture. An advertisement which should in words minutely and vividly describe the beauty of a lady whom it fully identified might be quite as objectionable to her and quite as serious an invasion of her right of privacy as if it published a copy of her photograph. Word pictures might be the most damaging of all pictures.

The right to be let alone or ignored by the public cannot be absolute. To give information about a person to other people is in itself innocent, and is not a violation of his rights. It is essentially the same whether such information is given by writing, by print, or by the more primitive language of pictures. The wrong, if any, does not begin until the information is of such a character or given in such a way or under such conditions as to cause injury. The conceded right of people to speak or publish information about each other, so long as the publication is not defamatory, sufficiently shows that a right to complete privacy cannot exist. A respectful and creditable biographical sketch of a person in a local history, with similar sketches of his neighbors, would hardly be deemed unlawful; and its character is not changed by including a fair portrait as part of the sketch. Publishing such a portrait of a citizen in a local newspaper in connection with a truthful and courteous item of news concerning him would not be harmful, and for that reason would doubtless be held entirely legal. These illustrations make it evident that the unauthorized publication of a person's portrait cannot be held in every case to be an actionable wrong. But when one's portrait is used, without his consent and in such a way as to disgrace, humiliate, or prejudice him in the eyes of other people, the publication is tortious and essentially libelous. There can be no question that the publication of a portrait of a lady as an advertisement for merchandise without her consent might be made in such a way as seriously to prejudice her in the opinion of other people, and therefore do her a legal wrong. Her right of action might well be based, not on any theory of an abstract right of privacy, but on the fact that such a publication is derogatory in its character, and may subject her to ridicule, loss of respect, and consequent humiliation.

The public character of a person's life cannot deprive him of the right to be protected against libels, whether they consist in the wrongful publication of his portrait or otherwise. Every person's life is in some sense public. The difference between people in this respect is one of degree. The nature of their right is the same, whether they live a relatively retired or more conspicuous life. But the degree of the publicity of the person's career may be material in determining whether a publication concerning him is harmful or not, and also whether, if harmful, it is for any reason justifiable. In case of public officers or candidates for office public policy may justify what would be illegal in case of other citizens.

Another kind of right also is involved when an unauthorized use of one's portrait is made for advertising purposes. This is the right of property. One's portrait, like his name, may be used to designate his goods as part of a trade-mark or otherwise. The mere possibility that he may thus use it some time, if not now,

is sufficient to make the right to its exclusive use a property right, and entitle him to a remedy against any other person who attempts to appropriate it without permission. For this reason equity can certainly grant an injunction against the wrongful use of a portrait for trade purposes, although it might refuse such remedy against a publication which was injurious only to feelings or reputation.

The fair conclusion of the matter seems to be that an invasion of the so-called right of privacy by a publication, when actionable, is so, not because there is any right of privacy as such, but because the publication is damaging to one's reputation or standing, and therefore in the nature of a libel, or else because its use for trade purposes, may affect his property rights.—*Case and Comment*.

See 5 Va. Law Reg. 710.

QUESTIONS PROPOUNDED TO CANDIDATES FOR ADMISSION TO THE BAR AT
STAUNTON, SEPTEMBER 7, 1900.

1. State the manner in which a citizen of this commonwealth may obtain license to practice law in her courts.

2. What is Blackstone's view as to the origin of property? What is Chancellor Kent's, and which is the better and more generally accepted opinion?

3. As a general rule, what right does the finder of a lost chattel acquire to it where the true owner is not found?

4. A, whilst cleaning out a pool of water on B's land and under his orders, finds a gold ring. The real owner is not found. B brings action of detinue against A for the ring. Can he recover? Give reasons for your answer.

5. When has the seller the right to stop goods *in transitu*? And when he takes possession of them what are his rights?

6. A, the owner of flour lying in a warehouse, sold 119 barrels, supposing that they were all he had, and received the buyer's check in payment. The seller in fact had 123 barrels of flour, two more of each brand than he had actually sold. Between barrels of the same brand and quality there was no difference in price. Before separation of the 119 barrels from the 123 barrels, the warehouse was consumed by fire and the flour destroyed. Upon whom did the loss fall, and why?

7. What instruments are negotiable in this State, and what is meant by accommodation paper?

8. A devises a tract of land to B and her children. At the time when the will was executed B had four children. Before the death of the testator she gives birth to two more, one of them illegitimate. What interest does the mother and each of the six children take in the land? Give reasons for your opinion.

9. A verbally authorizes B to sell his farm, which he does by a written contract and signs it as the agent of A. C by a power of attorney authorizes D to sell his house and lot, which he does verbally. The terms of both contracts are definite and certain. Can they be specifically enforced? Give reasons for your view.

10. What is a resulting trust? What a constructive trust? Give an illustration of each.

11. V makes a will which contains the following provision: "I give unto my two sons, Charles and Henry, all the land I now reside on." Charles dies before his father, who has other children. What becomes of the interest which Charles would have taken if he had survived his father?

12. A, under the apprehension of, and immediately before death, delivers to B as a gift his (A's) own check on the National Bank of the Valley for \$1,000. After A's death B presents the check for payment. The cashier not being satisfied as to his duty consults you. What would you advise him, and why?

13. Define a partnership, and state how one partner's interest in the firm assets may be subjected to the payment of a *fiery facias* against him on an individual debt?

14. What is meant by the terms "contribution" and "subrogation?" State when one partner who has paid with his own money a judgment against the firm may be subrogated to the rights of the judgment creditor against the lands of the other members of the firm.

15. Define the term "eminent domain" and state when and how a railroad company may acquire property for its uses?

16. What is a corporation; and how are they chartered in this State?

17. When will a court of equity specifically execute a verbal contract for the sale of land?

18. B, by a writing properly recorded, bound himself to devise certain lands to R, a former slave, if she would remain and live with him and his wife during their natural lives. Although R did not sign the writing she accepted its terms and performed them on her part. B died without making a will. What are R's rights and how can she enforce them?

19. In the case stated in the last preceding question, B, after the death of his wife, married a second time. The last wife survived him. Is she entitled to dower in the land which he agreed to devise to R? Give reasons for your opinion.

20. What is meant by marshalling assets, and what is the object of it?

21. What is a fixture? Are dry kilns erected by the tenant upon a saw mill plant pursuant to a covenant in the lease removable as trade fixtures? Give reason for your view.

22. What duty does a land owner owe (a) to trespassers; (b) to licensees; and (c) to invited guests?

23. A patient in the Lunatic Asylum at Staunton is put to work in an unsafe place by its superintendent, and by reason thereof, without fault on the part of the patient, he loses his leg. Can he recover for the injury done him, and if so, against whom and in whose name must his action be brought?

24. In order to sustain an action for malicious prosecution, what must be alleged and proved?

25. What spoken words are slanderous *per se*?

26. What is the difference between an action of unlawful detainer and an action of ejectment; (a) in the mode of procedure; (b) in the courts which have jurisdiction; (c) in the effect of the judgments rendered?

27. Name the courts of record, both State and Federal, which have jurisdiction in this State, and give generally the jurisdiction of each?

28. What pleas must be good in form as well as in substance?

29. What is the object of a demurrer to declaration? Of a demurrer to evidence?

30. If the answer to a bill in chancery sets up new matter to which the complainant wishes to reply, how can it be done under our practice?
31. When and for what purpose may a bill of review be filed?
32. What is the general rule as to the admissibility of hearsay evidence? Give four exceptions to the general rule.
33. When is evidence admissible as a part of the *res gestae*?
34. Name a half dozen facts of which the courts take judicial notice.
35. What is the general rule for determining the admissibility of evidence in any case?
36. In the trial of a cause upon a foreign contract, how far does the law of the foreign State govern, and how far the law of the forum?
37. A steals from B's person \$6 in money. Of what offence is he guilty?
38. Under what circumstances may a party who has engaged in a mutual combat be excused for taking the life of the other upon the ground of self-defence?
39. Define embezzlement. Is it a common law or statutory offence?
40. When may a person charged with larceny be tried in a county or corporation other than that in which the property was stolen?

LIST OF SUCCESSFUL APPLICANTS PASSING THE BAR EXAMINATION AT STAUNTON, SEPTEMBER 7, 1900.—We print below a list, with addresses, of those who were admitted to the bar at the recent examination in Staunton. The colleges represented, so far as we have been able to ascertain them, are indicated in parentheses:

- George E. Anderson (Univ. Va.), Richmond.
H. W. Brunk (B. L., Richmond Coll.), Richmond.
George H. Busch (Univ. Va.), Charlottesville.
Fletcher C. Campbell (B. L., Richmond Coll.), Richmond.
Alonzo Boleyn Carney (Univ. Va.), Portsmouth.
Daniel Coleman, Hampton.
E. V. Farinholt (Richmond Coll.—Summer Law School Univ. Va.), Richmond.
Melvin Flegenheimer (Richmond Coll.), Richmond.
Leslie C. Garnett (LL. B., LL. M., Georgetown Univ.—Summer Law School Univ. Va.), Mathews.
Earnest R. Gray (Univ. Va.), Palmyra.
John Janney (B. L., Univ. Va.), Leesburg.
Edward Bunker Jones (B. L., Univ. Va.), Monterey.
Otho Grattan Kean, Thompson's X Roads.
Frank McCormick (Univ. Va.), Berryville.
Patrick C. O'Gorman (B. L., Univ. Va.), Norfolk.
James Colon Page (B. L., Richmond Coll.), Richmond.
Gordon Paxton (B. L., Central Univ. Ky.—Summer Law School, Univ. Va.), Buena Vista.
Charles Cotesworth Pinckney (Univ. Va.), Crescent Hill, Ky.
Warren Rice, Winchester.
James F. Ross (Summer Law School, Univ. Va.), Pearisburg.
Henry Francis Scheele (Univ. Va.), Staunton.
Meredith Eugene Stickley (Univ. Va.), Woodstock.
Robert H. Talley (Richmond Coll.), Richmond.
R. Gray Williams (Univ. Va.), Winchester.